

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Mediacom Minnesota LLC	)	
	)	CSR 6006-E
Petition for Determination of Effective	)	
Competition in Chanhassen, Minnesota	)	
(CUID MN0577)	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 25, 2003**

**Released: June 27, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Mediacom Minnesota LLC ("Mediacom") has filed with the Commission a petition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act") and Sections 76.7(a)(1) and 76.905(b)(2) of the Commission's rules for a determination of effective competition in the City of Chanhassen, Minnesota.<sup>1</sup> Mediacom alleges that its cable system serving the City is subject to effective competition and therefore exempt from cable rate regulation because of competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and DISH Network ("DISH"). The City of Chanhassen filed an opposition to which Mediacom replied.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>2</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>3</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>4</sup> Based on the record in this proceeding, Mediacom has met this burden.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to

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<sup>1</sup>See 47 U.S.C. § 543(a)(1); 47 C.F.R. §§ 76.7(a)(1) and 76.905(b)(2). Chanhassen is certified to regulate basic cable service rates.

<sup>2</sup>47 C.F.R. § 76.906.

<sup>3</sup>47 C.F.R. § 76.905.

<sup>4</sup>See 47 C.F.R. §§ 76.906 and 907.

programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.<sup>5</sup>

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>6</sup> Mediacom has provided evidence of the advertising of DBS service in the news media serving the City.<sup>7</sup> With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.<sup>8</sup> We find that Mediacom has demonstrated that Chanhassen is served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Mediacom also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the City, that there exists no regulatory, technical, or other impediments to households within the City taking the services of the DBS providers, and that potential subscribers in the City have been made reasonably aware of the MVPD services of DirecTV and DISH.<sup>9</sup> Chanhassen filed an opposition that "accepts (without conceding) that the two DBS providers satisfy the first prong of the Competing Provider test."<sup>10</sup> Accordingly, we find that the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Mediacom sought to determine the competing provider penetration in Chanhassen by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers in Chanhassen on a zip code plus four basis.<sup>11</sup> Chanhassen's opposition alleges that Mediacom has not met its burden of demonstrating that the number of households subscribing to DBS providers exceeds 15 percent of the households in Chanhassen.<sup>12</sup> More specifically, Chanhassen questions the accuracy and validity of the data submitted by Mediacom because only summary data was provided, rather than "the underlying data of the SkyTrends report demonstrating which zip codes were used in rendering calculations."<sup>13</sup> Chanhassen therefore asserts that the SkyTrends' data is "not precise enough to verify that DBS subscribers reside in the City as opposed to other adjacent communities."<sup>14</sup> Chanhassen also asserts that DBS subscribership is high because Mediacom does not provide service to outlying areas of the City limits and the City's most current data based upon building permits indicates at least 7,600

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<sup>5</sup>47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>6</sup>*See MediaOne of Georgia*, 12 FCC Rcd 19406 (CSB 1997).

<sup>7</sup>*See* Mediacom Petition at 4 and Exhibit A.

<sup>8</sup>*See* 47 C.F.R. § 76.905(g). *See also* Mediacom Petition at 4-5 and Exhibits B, C, and D.

<sup>9</sup>*See* Mediacom Petition at 3-4.

<sup>10</sup> Opposition at 1.

<sup>11</sup>Mediacom Petition at 6 and Exhibits F and F-2.

<sup>12</sup>Opposition at 2.

<sup>13</sup>*Id.*

<sup>14</sup>*Id.*

households within the City, rather than the 6,914 households cited by Mediacom.<sup>15</sup>

6. In reply, Mediacom argues that the Commission has in numerous proceedings accepted SkyTrends' data for purposes of demonstrating effective competition.<sup>16</sup> Mediacom also argues that Chanhassen does not understand the SkyTrends' ZIP+4 process and further explains that it is designed to determine DBS subscribers located within a particular franchise area.<sup>17</sup> Mediacom provides an explanation of the SkyTrends' ZIP+4 process in its reply.<sup>18</sup> Mediacom also argues that the Commission has already considered and rejected Chanhassen's argument that effective competition should be denied where there is not head-to-head competition between the cable operator and DBS in all areas of the franchise.<sup>19</sup> Mediacom also argues that Commission precedent has accepted Census 2000 data as a source of household data for effective competition, rather than the City's proposed building permit figure. Even using the City's figure, Mediacom asserts that it would still be able to establish that DBS penetration exceeds 15 percent.<sup>20</sup>

7. As Mediacom notes, we have repeatedly accepted SkyTrends' subscriber reports on behalf of the DBS providers in satisfaction of Section 76.907(c) of the Commission's rules.<sup>21</sup> Pursuant to this provision, cable operators may request subscriber information from competitors for effective competitive purposes, however, this information may be limited to numerical totals.<sup>22</sup> Mediacom provided Chanhassen with the relevant portion of the SkyTrends report identifying the total number of DBS subscribers allocated to the City, as well as a copy of the methodology detailing how SkyTrends reached this result.<sup>23</sup> Mediacom also provided a summary of the SkyTrends methodology involved in SkyTrends' ZIP+4 process.<sup>24</sup> Chanhassen presents no evidence to call into question the reliability of the SkyTrends' report submitted by Mediacom. Accordingly, we will accept the number of Chanhassen DBS subscribers indicated in Mediacom's petition.

8. In addition to its concerns regarding the subscriber information provided by Mediacom, Chanhassen argues that our analysis should consider that DBS service is higher in outlying areas of the City that Mediacom does not serve. We have previously rejected such assertions since "actual head-to-head competition is not a requirement of the competing provider test, nor, standing alone, indicative of franchise area redefinition."<sup>25</sup> Finally, Chanhassen argues that the use of 2000 Census household data to determine the aggregate DBS penetration within the City is inappropriate since the City is a rapidly growing area and 2000 Census data is not reflective of the most current data. Chanhassen suggests that

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<sup>15</sup> Mediacom's Petition contained a typographical error that stated that there were 6,614 households in Chanhassen according to Census 2000. Mediacom corrected this error in its Reply. Mediacom Reply at 3.

<sup>16</sup> Mediacom Reply at 1-2.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 2-3.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> See 47 C.F.R. § 76.907(c); see, e.g., *Cablevision of Paterson*, 17 FCC Rcd 17239 (2002); *Mountain Cable Company d/b/a Adelphia Cable Communications*, 14 FCC Rcd 13994, 13997 n.26 (1999).

<sup>22</sup> 47 C.F.R. § 76.907(c).

<sup>23</sup> Petition at F and F-2; Reply to Opposition.

<sup>24</sup> *Id.* at 2.

<sup>25</sup> See *Cablevision of Paterson*, 17 FCC Rcd at 17241.

we use City building permits instead of Census 2000 data.<sup>26</sup> For effective competition purposes, the Commission utilizes the U.S. Census Bureau's definition of "households" which includes only occupied housing units."<sup>27</sup> Under this definition, "households" is a subset of "housing units," with the latter being comprised of both occupied and unoccupied year round residences. We therefore find that the use of building permits is inappropriate for effective competition purposes.<sup>28</sup>

9. Turning to the competitive penetration level in Chanhassen, Mediacom asserts that it is the largest MVPD because its subscribership exceeds the aggregate DBS subscribership in Chanhassen.<sup>29</sup> Mediacom submitted Census 2000 data indicating that there are 6,914 households in Chanhassen.<sup>30</sup> Based on the aggregate 1,367 DBS subscribers in Chanhassen, we calculate that the competing provider penetration rate in Chanhassen is 19.77 percent.<sup>31</sup> We find that Mediacom has demonstrated that the number of households subscribing to programming services offered by providers, other than the largest MVPD, exceeds 15 percent of the households Chanhassen. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we concluded that Mediacom has submitted sufficient evidence demonstrating that its cable system serving the City of Chanhassen is subject to effective competition.

### III. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Mediacom Minnesota LLC **IS GRANTED**.

11. **IT IS FURTHER ORDERED** that the certification of Chanhassen, Minnesota to regulate basic cable service rates **IS REVOKED**.

12. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>32</sup>

#### FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

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<sup>26</sup> Opposition at 2.

<sup>27</sup> See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 9 FCC Rcd 4316, 4324 (1994); see also [www.census.gov/dmd/www/glossary.html](http://www.census.gov/dmd/www/glossary.html) ("Census Glossary").

<sup>28</sup> Even using the City's building permit figure, Mediacom satisfies the second prong of the competing provider test (1,367 DBS Subscribers ÷ 7,600 Chanhassen "building permit" housing units = 17.99%).

<sup>29</sup> Petition at 6 and Exhibits E, F, and F-2.

<sup>30</sup> *Id.* and Exhibit G.

<sup>31</sup> *Id.* (1,367 DBS subscribers ÷ 6,914 Chanhassen households = 19.77%).

<sup>32</sup> 47 C.F.R. § 0.283.